

ENROLLED ACT NO. 26, HOUSE OF REPRESENTATIVES

SIXTY-FIRST LEGISLATURE OF THE STATE OF WYOMING
2011 GENERAL SESSION

AN ACT relating to child custody and visitation; providing definitions; limiting the modification of custody and visitation for specified military personnel; specifying factors considered in the modification of custody and visitation; permitting the assignment of visitation rights as specified; providing for expedited hearings; providing for electronic evidence; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 20-2-205 is created to read:

20-2-205. Temporary military duty; definitions; modification of orders; visitation assignment; electronic evidence.

(a) When a service member who has custody or visitation of a child receives temporary duty, deployment or mobilization orders from the military which require the service member to move a substantial distance from the service member's residence or otherwise have a temporary but material effect on the service member's ability to exercise custody or visitation responsibilities:

(i) Any order establishing the terms of custody or visitation in place at the time the service member receives the temporary duty, deployment or mobilization orders may only be temporarily modified so as to provide for the child's best interests;

(ii) Any order modifying an existing custody or visitation order that is determined necessary due to the temporary duty, deployment or mobilization of a service member shall specify that the service member's military

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service is the basis for the order and shall further state that it is entered by the court solely as a temporary order;

(iii) In issuing any temporary custody or visitation order under this section, the court shall consider whether the temporary order should automatically terminate;

(iv) For purposes of determining custody and visitation after the return of a service member and upon motion under W.S. 20-2-204, the temporary duty, mobilization or deployment of the service member, and the resulting temporary disruption to a child's schedule, shall be neutral factors in determining a material change in circumstances and shall not, alone, constitute a material change in circumstances warranting a permanent modification of custody or visitation rights.

(b) If a service member with visitation rights receives temporary duty, deployment or mobilization orders that require the service member to move a substantial distance from the service member's residence or otherwise have a material effect on the service member's ability to exercise visitation rights, the court may, upon motion of the service member, order that the service member's visitation rights, or a portion thereof, may be exercised by a family member with a close and substantial relationship to the minor child for the duration of the service member's absence, if the alternate visitation is in the child's best interest.

(c) Upon motion of a service member who has received temporary duty, deployment or mobilization orders, the court shall, for good cause shown, expedite any pending hearing in custody and visitation matters when the military

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duties of the service member have a material effect on the service member's ability, or anticipated ability, to appear in person at a regularly scheduled hearing.

(d) Upon motion of a service member who has received temporary duty, deployment or mobilization orders together with reasonable advanced notice and proof that the service member's military duties have a material effect on his ability to appear in person, the court may allow the service member to present testimony and evidence by electronic means in pending custody and visitation matters. The phrase "electronic means" includes communication by telephone, video teleconference or the Internet.

(e) Nothing in this section shall alter the duty of the court to consider the best interest of the child in deciding custody or visitation matters.

(f) As used in this section:

(i) "Deployment" means federal service of the United States under title 10, United States Code, in compliance with military orders received by a service member to report for combat operations, contingency operations, peacekeeping operations, a temporary duty assignment or other federal service for which the service member is required to report and to be unaccompanied by family members. "Deployment" also shall encompass any federal service that includes a period during which a service member is listed by the United States department of defense as missing in action, a prisoner of war or remains subject to his deployment orders on account of security sequestration, sickness, wounds, leave or other lawful cause. The term shall not apply to any service member who is absent without leave or considered a deserter from the armed forces;

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(ii) "Mobilization" means the recall to active duty of a retired service member or the call-up of a national guard or reserve component service member to extended active duty status pursuant to title 10 United States Code, sections 12301, 12302, 12303 and 12304. "Mobilization" does not include national guard or reserve annual or weekend training;

(iii) "Return" means official release or termination of temporary duty, deployment or mobilization orders or the resumption of a service member's physical presence within the state of Wyoming or state of permanent residence if other than Wyoming. "Return" does not include presence during temporary leave periods;

(iv) "Service member" means a uniformed member of the United States army, navy, air force, marine corps, coast guard, United States public health service commissioned corps, national oceanic and atmospheric administration commissioned corp, national guard or any reserve or auxiliary component thereof;

(v) "Temporary duty" means the temporary transfer of a service member from one (1) military installation to a different location for a period of more than forty-five (45) days but less than one hundred eighty (180) days in order to accomplish training, assist in the performance of any military mission or for medical treatment.

Section 2. W.S. 20-2-201 by creating a new subsection (g), 20-2-203(a), 20-2-204(c) are amended to read:

20-2-201. Disposition and maintenance of children in decree or order; access to records.

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(g) At anytime a court is considering the custody or visitation rights of a service member, as defined by W.S. 20-2-205, the court shall comply with W.S. 20-2-205.

20-2-203. Jurisdiction for enforcement and modification.

(a) A court in this state which enters a custody order under W.S. 20-2-201 has continuing subject matter jurisdiction to enforce or modify the decree concerning the care, custody and visitation of the children as the circumstances of the parents and needs of the child require, subject to the provisions of the Uniform Child Custody Jurisdiction and Enforcement Act. A service member's temporary duty, deployment or mobilization, as defined in W.S. 20-2-205, shall not alter any court's continuing jurisdiction under this section. A court which has jurisdiction to enforce or modify an order under this section may decline to exercise its jurisdiction if it finds it is an inconvenient forum under the circumstances of the case and that the court which entered the original order is a more appropriate forum and has jurisdiction as set forth in the Uniform Child Custody Jurisdiction and Enforcement Act.

20-2-204. Enforcement and modification.

(c) A court having jurisdiction may modify an order concerning the care, custody and visitation of the children if there is a showing by either parent of a material change in circumstances since the entry of the order in question and that the modification would be in the best interests of the children pursuant to W.S. 20-2-201(a). In any proceeding in which a parent seeks to modify an order concerning child custody or visitation, proof of repeated,

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unreasonable failure by the custodial parent to allow visitation to the other parent in violation of an order may be considered as evidence of a material change of circumstances. Any modification under this subsection shall be subject to the limitations and requirements of W.S. 20-2-205.

Section 3. This act is effective July 1, 2011.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk